

REMARKS

Favorable consideration of the present application is respectfully requested.

Claims 1, 2, 5-9, and 12-21 are currently pending. Claims 1 and 17-19 have been amended. Claim 3, 4, 10 and 11 have been previously canceled. Applicants believe that the claims, as now presented, are clearly allowable.

Claims 17 and 18 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Applicants have amended the claims to overcome the § 112, second paragraph, rejections and respectfully request that the Examiner formally withdraw the rejection.

Claims 1, 2, 5-7, 12-14 and 19 are rejected under 35 U.S.C. § 102(b) as being anticipated by Acker ("Acker") (U.S. Patent No. 4,366,806). Applicants have amended Claims 1 and 19 to overcome the rejection.

Regarding Claim 1, Claim 1 recites, *inter alia*:

“ (a) a rim portion;
 (b) a plurality of closed air-filled buoyancy pockets spaced around the rim portion and associated with the rim and/or the cover portion for giving buoyancy to the module when in use such that the rim portion is substantially submerged in the water; and
 (c) a cover portion extending from the rim portion such that, when in use, the cover portion is spaced above the water and defines an air space between the cover portion and the water and the cover portion having indentations spaced around a perimeter of the cover portion and that nest with the closed air-filled buoyancy pockets of like modules when stacked.”

In the Office Action, the Examiner asserts that Acker discloses air-filled buoyancy pockets in the form of troughs 22 that the Examiner suggests are capable of displacing water and, therefore, provide buoyancy. In support of this position, the Examiner refers to Figure 2. However, Figure 2 discloses that the water level on the pool heater in normal

use is at a level below an intersection between the membrane 14 and a depending perimeter wall 16. The troughs 22 are formed in the membrane 14 only and, therefore, are spaced above the water level and will not, in ordinary use, provide buoyancy. Specifically, the troughs 22 follow the incline of the membrane 14. This means that, if the water is in contact with the underside of the membrane 14, the troughs 22 would not displace water because the troughs 22 on the top-side of the membrane 14 are open and would fill with water such that there is no buoyancy effect. For example, if the water level is at a level coinciding with half the height of the membrane 14, the lower half of each trough 22, i.e., the half closest to the perimeter wall 16, would be below the level of the water surface. Accordingly, the troughs 22 would be filled with water and, therefore would not provide any buoyancy effect. Therefore, the troughs 22 are not equivalent to the closed air-filled pockets for giving buoyancy to the module, as recited in Claim 1, and, the reading adopted by the Examiner is inconsistent with the specific provision of foam strips 28 to provide buoyancy in the normal use of the pool heater disclosed in Acker. Furthermore, Acker discloses that the troughs 22 are for strengthening the cover 18 (see Column 4, lines 64-66) and that the foam strips 28 are intended to provide buoyancy (see Column 5, lines 5-22). Regardless, even assuming, *arguendo*, that the view of the troughs 22 taken by the Examiner is correct, Acker, does not disclose separate indentations in the cover portion that nest with the closed air-filled pockets when modules disclosed in Acker are stacked, as recited in Claim 1.

Additionally, Acker does not disclose that the troughs are closed to form air-filled buoyancy pockets, as recited in Claim 1. Therefore, Acker does not disclose a plurality of closed air-filled buoyancy pockets spaced around the rim portion and associated with the rim and/or the cover portion for giving buoyancy to the module when in use such that the

rim portion is substantially submerged in the water; and a cover portion extending from the rim portion such that, when in use, the cover portion is spaced above the water and defines an air space between the cover portion and the water and the cover portion having indentations spaced around a perimeter of the cover portion and that nest with the closed air-filled buoyancy pockets of like modules when stacked, as recited in Claim 1.

Accordingly, because Acker does not disclose all of the elements recited in Claim 1, the § 102(b) rejection of Claim 1 and Claims 2, 5-7 and 12-14 that depend therefrom, is believed to be overcome. Accordingly, Applicants respectfully request the Examiner to formally withdraw the Section 102 rejection of Claims 1, 2, 5-7 and 12-14.

Regarding Claim 19, which has been amended similar to Claim 1, for at least those reasons given above for Claim 1, because Acker does not disclose all of the elements recited in Claim 19, the § 102(b) rejection of Claim 19 and Claims 20 and 21 that depend therefrom, is believed to be overcome. Accordingly, Applicants respectfully request the Examiner to formally withdraw the Section 102 rejection of Claims 19-21.

Claims 8, 9, 15-18, 20 and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Acker. Applicants have amended Claims 1 and 19 to overcome the § 102(b) rejection, as noted above. Therefore, for at least those reasons given above for Claims 1 and 19, the Section 103 rejection of Claims 8, 9, 15-18, 20 and 21 is believed to be overcome. Accordingly, the Examiner is respectfully requested to formally withdraw the section 103(a) rejection of Claims 8, 9, 15-18, 20 and 21.

Applicants believe that all currently pending Claims are now allowable and respectfully request that the Examiner issue a notice to that effect. However, should the Examiner believe that any further action is necessary to place this application in better

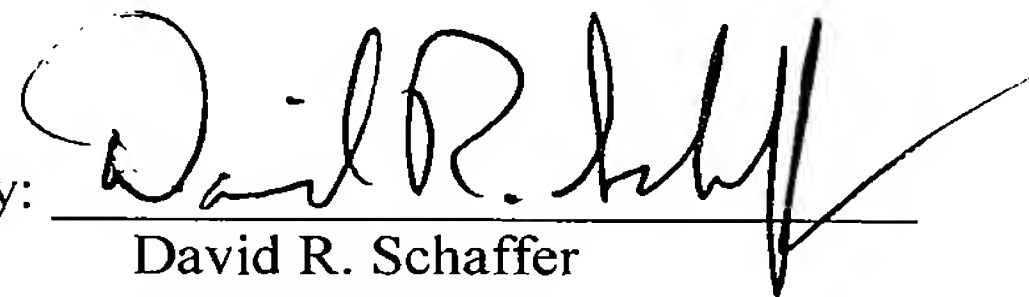
form for allowance, the Examiner is invited to contact Applicants' representative at the telephone number listed below.

The Commissioner is hereby authorized to charge to Deposit Account No. 50-1165 (T2211-12006US01) any fees under 37 C.F.R. §§ 1.16 and 1.17 that may be required by this paper and to credit any overpayment to that Account. If any extension of time is required in connection with the filing of this paper and has not been separately requested, such extension is hereby requested.

Respectfully submitted,

Date: January 21, 2009

By:



David R. Schaffer
Reg. No. 43,089

Miles & Stockbridge, P.C.
1751 Pinnacle Drive
Suite 500
McLean, Virginia 22102-3833
(703) 903-9000